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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

15 CLRb HANSON INDUSTRIES, LLC d/b/a
16 INDUSTRIAL PRINTING, and HOWARD
17 STERN, on behalf of themselves and all others
18 similarly situated,

19 Plaintiffs,

20 v.

21 GOOGLE, INC.,

22 Defendants.

CASE NO. C 05-03649 JW

**DEFENDANT GOOGLE'S
EVIDENTIARY OBJECTIONS TO
DECLARATION OF HOWARD STERN
AND EXHIBITS THERETO**

Fed. R. Civ. P. 56

Date: November 6, 2006

Time: 9:00 a.m.

CTRM: 8

Judge: Hon. James W. Ware

23 As set forth below, defendant Google, Inc. hereby objects to and moves to strike the
24 following testimony from the Declaration of Howard Stern ("Stern Decl."), submitted by
25 plaintiffs in support of their Motion for Partial Summary Judgment ("Motion").
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**DEFENDANT GOOGLE'S EVIDENTIARY
OBJECTIONS TO DECLARATION
OF HOWARD STERN AND EXHIBITS THERETO**

Case No. C05-03649 JW

[41063-0023-000000/LA062820 026.TMP]

EVIDENTIARY OBJECTIONS

	<u>Paragraph in Declaration</u>	<u>Objections</u>
2. (2:4-6)	"In October, 2003, I signed up for the Google AdWords Program. What enticed me to the program and what I relied on was the fact that Google represented that I would control my costs by setting a daily budget and per click charges, and there was no minimum charge."	Conclusory, lacks foundation, hearsay.
3. (2:7-10)	"Google also represents that the participant in the AdWords Program can pause its ads and not accrue any charges while its ads are paused. I found that feature extremely beneficial and generally paused my AdWords campaign often in order to control advertising costs and demand for my services."	Conclusory, lacks foundation, hearsay.
4. (2:11-13)	"When I enrolled in the AdWords Program, I gave the information required, such as, the name of the ad campaign, email address, billing information, daily budget (which I set at \$10) and costs per click."	Conclusory, lacks foundation, hearsay.
4. (2:13-16)	"I was not directed to, nor did I, review any of the numerous FAQs (frequently asked questions) that you can access online if you wanted to. I do not recall that I had to accept the FAQs prior to joining the AdWords Program and Google has not produced any evidence to the contrary."	Conclusory, lacks foundation, hearsay, not relevant.
5. (2:17-19)	"Google states that the: "Ad system ensures you never pay more than your daily budget multiplied by the number of days in a month your campaign was active. See Exhibit A	Lacks foundation; hearsay, not relevant. Howard Stern testified at deposition that he did not see Exhibit A before his counsel showed it to him during the course of litigation. Exhibit A is not admissible.

	<u>Paragraph in Declaration</u>	<u>Objections</u>
	hereto.”	
5. (2:19-22)	“In contrast to the way Google promotes AdWords (as a program that gives me complete control over my charges), I have been often charged by Google amounts greater than my daily budget. I have also been charged by Google amounts in excess of the amount of my daily budget times the number of days that my campaign was active during the course of a month.”	Conclusory, lacks foundation, hearsay, not relevant.
6. (2:23-25)	“For example, my AdWords campaign ran for 4 days in the month of September 2005. During that time my daily budget was set at \$10. Google should have charged me at most, \$40. In fact, it charged me over 8% more (\$43.25).”	Conclusory, lacks foundation; hearsay, not relevant. Howard Stern testified at deposition that he did not see Exhibit A before his counsel showed it to him during the course of litigation; Exhibit A is not admissible. Exhibit B lacks foundation and is inadmissible hearsay.
6. (2:25-27)	“In December 2005 my AdWords campaign ran for 2 days and my daily budget was \$10. I should have been charged \$20 by Google. In fact, it charged me over 6% more (\$21.28). See Exhibit B.”	Conclusory, lacks foundation; hearsay. Exhibit B lacks foundation and is inadmissible hearsay.
7. (3:1-4)	“While these overcharges may seem small, when you consider the hundreds of thousands of AdWords advertisers, the monthly bills to each and all those with daily budgets much higher than mine, the amount of monies Google receives from these overcharges becomes very significant.”	Conclusory, speculative, hearsay, no foundation, not relevant. Exhibit B lacks foundation and is inadmissible hearsay.
8. (3:5-10)	“When I complained about the overcharges to Google, I was told by Google that it indeed bills more than a daily budget on any given day (up to 120% of the daily budget,) and that	Conclusory, lacks foundation; hearsay.

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**DEFENDANT GOOGLE’S EVIDENTIARY
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	<u>Paragraph in Declaration</u>	<u>Objections</u>
	Google will charge up to 30 or 31 times a daily budget in a monthly bill. Thus, if my daily budget is \$10, Google states it is free to charge up to \$12 a day, as long as it doesn't charge more than \$300 or \$310 in a month. However, that is contrary to how Google advertised and promoted their AdWords Program.	
8. (3:10-12)	If, I had an active campaign for 10 days during a monthly period, I expect to be charged at most, \$100, not \$120, which Google now states it is free to charge me."	Conclusory, speculative, hearsay, no foundation, not relevant.
9. (3:13-14)	"Delivery of ads over and above my daily budget, is not beneficial to me because there is a limit to the amount of responses I can handle. The overdelivery just adds to my costs."	Conclusory, speculative, hearsay, no foundation, not relevant.
10. (3:15-16)	"Google's promotion of its AdWords Program and its billing practices are deceptive and misleading."	Conclusory, speculative, hearsay, no foundation.

DATED: October 16, 2006.

PERKINS COIE LLP

By _____ /S/
David T. Biderman
Attorneys for Defendant Google Inc.